

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.7991 and 16973 of 2006

COMMON ORDER:

For the sake of convenience, the parties are referred to as arrayed in W.P.No.7991 of 2006.

The petitioner is owner of premises bearing No.2-1-110 on the Station Road, Jangaon, between the plot of the second respondent (i.e., petitioner in W.P.No.16973 of 2006) and the road. The second respondent owned a small plot of 23 square yards. Out of that, the municipality acquired an extent of 10 square yards and on the remaining 13 square yards, the second respondent constructed ground and first floor with dimensions of 14 x 7 feet. The petitioner contends that the second respondent made the construction without obtaining proper permission and though he made repeated representations, the first respondent did not take any steps to demolish the same.

The first respondent issued notice, dated 04.05.2006, under Section 228 (1) of the A.P. Municipalities Act, which was followed by a final notice, dated 09.06.2006, under Section 340 of the A.P. Municipalities Act to the second respondent. Feeling aggrieved by those notices, the second respondent filed separate writ petition being W.P.No.16973 of 2006. The

same contentions were repeated by the parties in their respective pleadings.

Heard learned counsel for the petitioner and learned counsel for the respondents.

The principal contention of the petitioner is that the construction made by the second respondent is in a commercial area and according to the guidelines issued in G.O.Ms.No.422, Municipal Administration and Urban Development Department, dated 31.07.1998, the minimum area of plot shall be 21 square yards and since the place left with the second respondent is only 13 square yards, the construction is illegal.

In this context, it needs to be observed that the plot owned by the second respondent was within the stipulated extent and he was entitled to make construction upon it before the acquisition by the municipality. It is only after acquisition of 10 square yards from it, that the plot fell short of the area stipulated in G.O.Ms.No.422. For that, the second respondent cannot be blamed. In fact, the municipality ought to have been practical and reasonable while acquiring the land from the second respondent. It cannot render the left over piece unfit for any use. Fairness and reasonableness require the municipality to include the left over area also in acquisition. It may, no doubt, be true that the second respondent made construction without any permission. It is debatable as to whether such permission is necessary at all. The reason

is that there exist instructions from the Government not to insist any permission where the area of the plot is too small and it would not be possible at all to insist on set backs. At any rate, it is represented by the learned counsel for the second respondent that the municipality issued a notice, dated 07.07.2008, requiring his client to avail the benefit of regularization of unauthorized construction and in response to the same, the second respondent submitted an application on 15.07.2008. The matter is said to be pending. Even now, the municipality can verify the relevant facts such as dimension of the plot left with the second respondent, permissibility of any construction thereon, the applicability of the regularization scheme and also the provisions applicable to the plot of that size and take appropriate decision. The petitioner can also express his views in this regard.

It is axiomatic that when an application for regularization is pending, the question of demolition of the structure does not arise.

For the foregoing reasons, W.P.No.16973 of 2006 is allowed and the notice impugned therein is set aside. W.P.No.7991 of 2006 is disposed of, leaving it open to the first respondent to consider the application submitted by the second respondent for regularization and it shall also be open to the writ petitioner to put forward his contentions before the first respondent.

JUSTICE L.NARASIMHA REDDY

7th
June 2010
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